THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.24922 of 2001

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 18-10-2006

Between:

Mr.Santoshlal Gupta .. Petitioner

and

M/s.Bhanu Hotels & Proprietor Pvt. Ltd.,
rep. by its Managing Director Sri B.Prasad
and another ..
Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.24922 of 2001

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The writ petitioner seeks a Writ of Certiorari to quash the judgment, dated 16-10-2001, passed by the learned Special Court under the Land Grabbing (Prohibition) Act (for brevity, 'the Act') in L.G.C.No.160 of 1997.

The writ petitioner is the applicant, who filed the application under Section 8 of the Act, against the respondent for redelivery of the schedule mentioned land to the applicant and for compensation amounting to Rs.80,00,000/- after declaring the respondent as a land grabber. It was the case of the applicant that the applicant met with an accident on 31-05-1982 and received severe injuries on his head, due to which he lost his senses and that he was admitted in Gandhi Hospital, Secunderabad and treated by eminent Neurologist, but the condition was not improved. That in the year 1995 when the son of the applicant by name, Sunil Goel, filed the suit, O.S.No.473 of 1995, along with other co-parceners on the file of the I Additional Judge, City

Civil Court, Hyderabad, impleading the respondent as defendant No.3 therein, he came to know that the suit schedule property was purchased by him under a registered sale deed, dated 20-01-1979, for a consideration of Rs.56,000/- and that the petition schedule property was not the subject matter of the said suit and that in the written statement filed by the respondent in the said suit it was falsely claimed by him that on 26-11-1984 the applicant sold the schedule property to the respondent when in fact no such transaction did take place. That neither he delivered possession of the application schedule property to the respondent by receiving a sum of Rs.1,50,000/-, nor any such transaction did take place and that the schedule mentioned property was grabbed by the respondent by deceit without any lawful entitlement thereto.

The application was resisted by the respondent. It was his case that the applicant executed an agreement of sale, dated 26-11-1984, in his favour and possession was delivered pursuant thereto. It was his further case that on the same day apart from the applicant, his two brothers, by names, Subash Chandra Goel and Niranjanlal Goel also executed agreements of sale in his favour in respect of 1000 square yards and 400 square yards respectively and thus all the three brothers executed three agreements of sale in his favour and received consideration and delivered vacant possession of all the plots and therefore he could not be termed as a land grabber. On the strength of the above pleadings, the following issues were framed by the learned Special Court:

(1) Whether the applicant has title to the application schedule property?

(2) Whether the rival title set up by the respondent is true, valid and binding?

(3) Whether the respondents are land grabbers within the meaning of Act XII of 1982?

(4) Whether the applicant is entitled for any compensation?

(5) To what relief?

Additional issue:

Whether the present L.G.C. is maintainable in this Special Court under the provisions of A.P. Act XII of 1982?

At the time of enquiry, six witnesses were examined on the side of the applicant and Exs.A1 to A5 were got marked. The respondent examined himself as R.W.1, besides getting Exs.B1 to B3 marked. Appreciating the evidence on the point, adduced on either side, the learned Special Court was of the view that the respondent had been in possession of the application schedule property in his own right under the agreement of sale dated 26-11-1984 and the said agreement was true and valid and therefore the land grabbing case was not maintainable. Eventually, it dismissed the application with costs.

Smt. C.Jayashree Sarathy, learned senior counsel appearing for the petitioner, seeks to contend that the findings given by the learned Special Court are illegal and not supported by any cogent evidence and the Special Court exceeded its jurisdiction in having disbelieved the cogent evidence adduced on the side of the applicant.

Smt.Maamu Vani, learned counsel appearing for the first respondent, on the other hand, seeks to sustain the judgment. At the time of argument the learned counsel filed certain additional documents representing that they are the subsequent events that transpired after the disposal of the land grabbing case and in the interest of justice those events can be taken note of.

Having regard to the rival contentions made by the parties *inter alia* in the application and the counter filed before the Special Court, the most contentious issue seems to be as to whether the alleged agreement of sale, dated 26-11-1984, was executed by the applicant and Was he in a fit state of mind by then to have executed the said

agreement and delivered possession pursuant thereto. This crucial issue, which emerges out of the pleadings, has not been framed by the learned Special Court. It is no doubt true, eventually the learned Special Court reached the conclusion that Ex.B1 was true and valid. As many as six witnesses have been examined on the side of the applicant, including the applicant himself as P.W.2. The record shows that P.W.2 was summoned by the Court itself. He was not examined on the side of the applicant himself. There was no chief-examination of the witness. Surprisingly, P.W.2 was allowed to be cross-examined by the respondent. It is no doubt true that it is always open to the Court, so as to unravel the truth, to summon a particular person, when the parties to the litigation have not chosen to do so. The power of the Court can be seen from Section 165 of the Indian Evidence Act. However, when the parties have not chosen to examine particular witness and to unravel the truth the Court summons particular person to appear before it and depose, that person shall be examined as a Court witness. In the instant case, though P.W.2 has not been examined in chief, he was allowed to be cross-examined by the witnesses, which is quite incomprehensible. As can be seen from Sections 137 and 138 of the Indian Evidence Act, which lay down the procedure for examination of a witness in chief in cross and in re-examination, the witness shall be examined in chief first by the party calling him as a witness and then the right of the adversary to cross-examine that witness and then the right of the party who called the witness to re-examine him so as to clarify the ambiguity, if any, that has been crept in in the cross-examination. The provisions of Sections 137 and 138 of the Indian Evidence Act are mandatory. Ignoring these aspects, the learned Special Court peculiarly allowed P.W.2, who has been summoned at the instance of the Court, to be cross-examined

by his adversary, the respondent. The procedure thus adopted by the learned Special Court being against the mandate contained in Sections 137 and 138 of the Indian Evidence Act vitiates the enquiry.

When the execution of Ex.B1, agreement of sale, which is the crucial document, is denied by the applicant, more particularly, on the premise that the applicant was not in a fit state of mind, having met with an accident, to have executed validly the agreement, the burden to prove the valid execution of Ex.B1 rests squarely upon the respondent. However, the learned Special Court proceeded on the assumption that the burden is cast on the applicant. It has been observed *inter alia* in the judgment in page 10 that one of the attesters of Ex.B1, by name, Gopal Agarwal, being the brother of the applicant, was kept away from the witness box for the reasons best known to the applicant and that witness was best person to speak about the mental capacity of the applicant on the date of execution of the agreement of sale, dated 26-11-1984. We are afraid, that cannot be the correct legal position. In fact, to disprove the execution of Ex.B1, the applicant sought to examine P.W.4, the Doctor, who is said to have treated the applicant. We find no cogent reasons to disbelieve the testimony of the Doctor, but however, the learned Special Court sought to brush aside the evidence of P.W.4, the Doctor. On sole circumstance emanating from the record, the learned Special Court seems to have been swayed so as to eventually conclude that Ex.B1 was true and valid. The circumstance seems to be the suit filed by the sons of the brothers, including the son of the applicant, for partition against their fathers, challenging the alienation said to have been made by them and in that suit the property covered by Ex.B1 was conspicuously omitted. In the view of the learned Special Court, that omission buttresses the contention of the respondent that Ex.B1 was validly

executed. At page 13 *inter alia* in the judgment the learned Special Court observed that except the Doctor's evidence, namely, P.W.4, there was no evidence on record to show that on the date of the execution of Ex.B1 the applicant was not having sound mental condition to execute the agreement of sale and P.W.4's evidence did not show that as on 26-11-1984 the applicant was not in a position to execute the agreement of sale. We are unable to persuade ourselves to concur with the said finding with due respect. As discussed hereinabove, the burden is heavily cast upon the respondent to show that Ex.B1 has been executed by the applicant while he was in sound state of mind. There can be no other evidence than the evidence of the Doctor to prove the state of mind by particular person. It is no doubt true, it is open to the respondent to assail the evidence of the Doctor and the case of the applicant by showing cogently valid circumstances, with reference to which ultimately the Court can disbelieve the evidence of P.W.4, the Doctor. No such effort seems to have been made by the respondent, except examining himself as R.W.1 and filing the three agreements, Exs.B1 to B3. The fact that the execution of Exs.B2 and B3 is not in dispute may not automatically prove the execution of Ex.B1. Merely because two other brothers sought to sell the property under contracts of sale, it will not automatically prove that the applicant also joined them in having executed the Ex.B1, agreement of sale. Probabilities shall have to be weighed by the Court so as to unravel the truth, but probability itself will not ultimately the sole circumstance to prove or disprove a particular case.

One glaring aspect, which has been lost sight of, need be mentioned here. The application before the Special Court was filed by the applicant, being represented by his wife, on the premise that he

was of unsound mind. The application in fact has not been filed by the applicant in his individual capacity. The procedure envisaged under Order 32 of the Code of Civil Procedure shall be considered in such cases. However, this has not been denied specifically by the respondent. If really the applicant is of sound mind, the application could not have been maintained by seeking to file it through his wife representing him. The effect of such non-denial has not been considered by the learned Special Court. Having regard to these glaring illegalities we are constrained to hold that the learned Special Court has committed grave illegalities, which eventually affect the impugned judgment.

The two documents, which are now sought to be introduced as subsequent events by the learned counsel for the respondent, perhaps may change the entire gamut of the case. Those two documents are the counters said to have been filed by the applicant in two different proceedings. One is in a suit filed by the respondent against the applicant and others and the other is in the arbitration proceedings initiated by the respondent invoking the arbitration clause incorporated *inter alia* in the Ex.B1 agreement for the dissolution of the dispute. These counters show *inter alia* certain admissions said to have been made by the applicant in favour of the execution of the agreement. If these admissions are proved, they go a long way in support of the respondent's case. This Court cannot ignore the patent and take a different view to dispose of the Writ Petition, which may eventually result in travesty of justice. It is expedient in the interest of justice to permit the parties to file those documents and in that connection to give an opportunity to both the parties to prove or disprove the same. In that view of the matter, it is expedient to remit the matter to the Special Court so that both parties can have an opportunity to introduce

these documents, which may eventually help the Court in arriving at the truth. For that matter, the matter requires to be remitted to the Special Court for fresh consideration.

In the result, the Writ Petition is allowed and the impugned judgment is hereby set aside. The matter is remitted to the Special Court for fresh consideration, after giving the necessary opportunity to both the parties to adduce further evidence, if any, in the light of the observations made by this Court *inter alia* in this order. The costs will abide the result of the case.

T.CH.SURYA RAO, J.

G.CHANDRAIAH, J.

18th October, 2006.

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